



KENNETH PEDERSEN

187 IBLA 130

Decided March 11, 2016



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Interior Board of Land Appeals
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IBLA 2016-34

Decided March 11, 2016

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a mining claim forfeited for failure to timely pay the mining claim maintenance fee or file a small miner waiver certification. ORMC 172276.

Affirmed.

1. Evidence: Presumptions--Evidence: Burden of Proof--
Mining Claims: Rental or Claim Maintenance Fees:
Generally

There is a legal presumption that government officials have not lost or misplaced legally significant documents. This presumption can only be overcome by submission of probative evidence to the contrary.

2. Mining Claims: Abandonment--Mining Claims: Rental or
Claim Maintenance Fees: Small Miner Exemption

Defects in a Waiver Certification may be curable under 30 U.S.C. §28f(d)(3) and 43 C.F.R. § 3830.93, but there is nothing to cure unless the mining claimant requested a waiver before the September 1 deadline.

APPEARANCES: Kenneth Pedersen, Veneta, Oregon, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Kenneth Pedersen (Appellant) has appealed an October 15, 2015, decision made by the Oregon State Office, Bureau of Land Management (BLM). In the decision, BLM declared the mining claim Equanox 25 (ORMC 172276) forfeited for failure to pay the mining claim maintenance fee or file a small miner waiver certification (Waiver Certification) on or before September 1, 2015, for the 2016 assessment year.

Issue

The issue before us in this case is whether Appellant failed to pay a mining claim maintenance fee or file a Waiver Certification on or before September 1, 2015, rendering his mining claim forfeited by operation of law. For the reasons that follow, we agree with BLM that Appellant forfeited his mining claim and affirm BLM's decision.

Facts

Appellant sent a letter to BLM dated August 26, 2015, concerning the Equanox 25 mining claim and four other mining claims. See Letter from Mr. Pedersen to BLM dated Aug. 26, 2015, received by BLM Aug. 31, 2015. The letter references "2015-16 Waiver and Notice of Re[l]ocation Equanox 25" and reads as follows:

Please record the enclosed waivers and the notice of relocation for the following claims:

SAM-2	ORMC 171794 Behalf of Kenny P
Starken Meadows	ORMC 171795 Behalf of Kenny P
Moly Girl	ORMC # 171817 Behalf of Kenny P and Star W
More Moly	ORMC # 171818 Behalf of Kenny P and Star W

Check number 1208 in the amount of \$225 is attached/enclosed for the notice of relocation recording fee, Equanox 25.

Waiver certification for the waiver filing period beginning Sept. 1, 2015.

Id. Although the letter indicates that Waiver Certifications were enclosed, no Waiver Certifications dated before September 1, 2015, appear in the record. The record does contain, however, a Mining Claim Location Notice for Equanox 25 and three maps showing the location of Equanox 25. See Mining Claim Location Notice received Aug. 31, 2015, and attached maps. The location notice indicates that the date of discovery of Equanox 25 was June 6, 2015, and that the locators were Appellant and Star Wood. Appellant's letter enclosed a check for \$225, which covered a \$20 processing fee for the location notice, a \$37 location fee, and a \$155 initial maintenance fee for

the assessment year in which the claim was located (the 2015 assessment year).¹ See BLM Receipt No. 3381599 dated Aug. 31, 2015.

On October 15, 2015, BLM sent Appellant the decision declaring Appellant's mining claim forfeited by operation of law. In its decision, BLM explains that Appellant's payment of \$225 with the location notice allowed the claim to be recorded but did not cover the 2016 maintenance fee. Decision at 1.² Because Appellant did not either pay a maintenance fee or submit a Waiver Certification by September 1, 2015, for the 2016 assessment year, BLM deemed the mining claim forfeited by operation of law in accordance with 43 C.F.R. § 3830.91. Decision at 1. This appeal followed.

Legal Standards

Pursuant to the statute codified at 30 U.S.C. § 28f(a) (2012) and BLM's regulations at 43 C.F.R. §§ 3830.21(d) and 3834.11(a)(2), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on or before September 1 of each year. Those who pay the maintenance fee are excused from performing the assessment work required under the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2012), and meeting the related filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (2012).

¹ See 43 C.F.R. §§ 3000.12(a) (To record a mining claim . . . , you must pay [a] processing fee along with the initial maintenance fee and the one-time location fee required by statute."), 3834.11(a)(1) ("When you first record a mining claim or site with BLM, you must pay a location fee and an initial maintenance fee for the assessment year in which you located the mining claim or site."). Appellant overpaid BLM by \$13, which BLM refunded to him. See Reversal Confirmation dated Oct. 15, 2015.

² BLM further stated, "the 90-day recordation period has passed to submit the required additional 2016 \$155.00 maintenance fee," citing 43 C.F.R. § 3834.11(a). Decision at 1. The meaning of BLM's statement is unclear. The 90-day recordation period references the deadline for recording a claim and paying the location fee and initial maintenance fee after it has been located, and Appellant met this deadline. The deadline for the 2016 maintenance fee was September 1, 2015, which had passed when BLM issued its decision, but that date is not related to the 90-day recordation period.

The Secretary of the Interior may waive the claim maintenance fee if certain conditions are present. 30 U.S.C. § 28f(d); 43 C.F.R. Part 3835. Under 30 U.S.C. § 28f(d)(1)(A) and (B), the Secretary may waive the claim maintenance fee requirement for a claimant who certifies in writing that on the date the maintenance fee payment was due, the claimant and all related parties (1) held not more than 10 mining claims, mill sites, tunnel sites, or any combination thereof, on public lands; and (2) performed assessment work during the assessment year ending at noon of September 1 of the calendar year in which payment of the maintenance fee was due (that is, the assessment year preceding the assessment year for which the waiver is sought). The second certification, regarding assessment work performed during the previous year, is not required during the year the claim was located. 30 U.S.C. § 28 (the requirement for annual assessment work begins at 12:01 AM on the September 1 following the date of location); 43 C.F.R. § 3835.14(a)(1) and (b) (A small miner Waiver Certification for a newly-recorded mining claim must be submitted on or before September 1, but “[t]he Mining Law does not require you to perform assessment work in the assessment year in which you locate a mining claim.”). “Assessment year” means the 12 consecutive months beginning at 12 noon on September 1 each year, ending at 12 noon of September 1 the following year. 43 C.F.R. § 3830.5.

Failure to pay the required maintenance fee on or before September 1 conclusively constitutes forfeiture of the mining claim, and the mining claim is deemed null and void by operation of law. 30 U.S.C. § 28i (2012). BLM regulations further specify that a claimant will forfeit his or her mining claims if he or she fails to “[s]ubmit a small miner waiver request on or before the due date (see § 3835.1) and also fail to pay the annual maintenance fee on or before the due date.” 43 C.F.R. § 3830.91(a)(4). *See also* 43 C.F.R. § 3830.05 (definition of “forfeit” or “forfeiture,” explaining that the words have the same effect as “abandoned and void” and “null and void”).

BLM and this Board do not have authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statute’s automatic claim forfeiture provisions. *Jon Roalf*, 169 IBLA 58, 62 (2006); *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005). The provisions of the statute are self-executing, meaning that once the statutory deadline for submitting the maintenance fee is missed, the mining claim is forfeited. *Jon Roalf*, 169 IBLA at 62; *Carl A. Parker, Sr.*, 165 IBLA at 303-04.

Analysis

Appellant makes two principal arguments on appeal. First, Appellant argues that he timely submitted a Waiver Certification for the 2016 assessment year. Notice

of Appeal (NOA) at 1-2. Second, Appellant argues that, if there were defects in his Waiver Certification, he should be allowed to cure those defects under BLM's regulations. *Id.* at 2-3. We have carefully considered all of Appellant's arguments and conclude that he did not timely file a Waiver Certification for the Equanox 25 mining claim for the 2016 assessment year, nor did he pay the maintenance fee, and he therefore forfeited the claim.

Appellant argues that his August 2015 letter either expressly requested a waiver for Equanox 25 or, by requesting a waiver for other mining claims, demonstrated that he qualified for a waiver for Equanox 25 whether he expressly requested it or not. The letter, however, does not meet the statutory or regulatory requirements for a Waiver Certification. For example, the letter does not contain a certification that the Appellant held not more than 10 mining claims, mill sites, or tunnel sites on public lands on September 1, 2015. 30 U.S.C. § 28f(d)(1)(A). This certification is included on BLM's Maintenance Fee Waiver Certification form, but there are no waiver forms in the record except for the one Appellant hopes to submit if given an opportunity to cure any defects in his original submission. *See* NOA at 3 ("I have enclosed a waiver for the affected claim . . . to complete the file and comply with any possible forthcoming Cure Defect Notice.").

[1] There is a legal presumption that government officials have not lost or misplaced legally significant documents. *Randall Story*, 185 IBLA 239, 241-42 (2015); *Christopher L. Mullikin*, 180 IBLA 60, 68-69 (2010); *John J. Trautner*, 165 IBLA 265, 270 (2005). Because the record before us does not include any Waiver Certifications filed with BLM by September 1, 2015, we presume that Appellant did not timely file one. This presumption can only be overcome by submission of probative evidence to the contrary, and Appellant has submitted none.

[2] As Appellant observes in his NOA, defects in a Waiver Certification may be curable. 30 U.S.C. § 28f(d)(3); 43 C.F.R. § 3830.93. But without any Waiver Certification in the record to show that Appellant timely requested a waiver for the 2016 assessment year, there is nothing for Appellant to cure. *See Otto Adams*, 155 IBLA 1, 4 (2001) ("We, therefore, hold that, when [30 U.S.C. § 28f(d)(3)] refers to a waiver certification which has been determined to be defective, it is referring to one that was filed on or before the current September 1 deadline, not one which was filed at some time thereafter, since that is what is plainly required by regulation.").

BLM regulations expressly provide that failure to submit a Waiver Certification and also to pay the annual maintenance fee on or before September 1 of a new assessment year results in forfeiture of the mining claim. Because Appellant did not pay the maintenance fee or submit a Waiver Certification for the 2016 assessment year, he forfeited his claim. *See* 43 C.F.R. §§ 3830.91(a)(4), 3835.92(a).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we affirm BLM's decision.

/s/

Silvia M. Riechel
Administrative Judge

I concur:

/s/

James F. Roberts
Administrative Judge